IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1624 of 1986

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

THE AGRICULTURAL PRODUCE MARKET COMMITTEE,HAVING ITS
Versus
STATE OF GUJARAT (NOTICE TO BE SERVED UPON THE SECRETARY

Appearance:
1. Special Civil Application No. 1624 of 1986
MR KG VAKHARIA for Petitioner No. 1
MRS MANISHA LAVKUMAR AGP for Respondent No. 1
MR HARIN P RAVAL for Respondents No. 2-3

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE K.A.PUJ

Date of decision: 13/12/2001

ORAL JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

1. This Petition under Article 226 of the Constitution has been filed by the Agricultural Produce Market Committee, Rajkot (for short `APMC, Rajkot') challenging the orders and bills Annexures A to E dated 2-3-1986 proposing to recover property tax and education cess on the properties of the petitioner. In the Petition, specific prayer was made seeking declaration of invalidity of the provisions of Section 132 of the Bombay Provincial Municipal Corporations Act, 1949 (for short `the BPMC Act'), but the same has not been seriously pressed at the time of hearing.

2. We have heard the learned counsel for the parties. Learned counsel brought to our notice two Single Judge Bench decisions of this Court rendered on 6-7-1990 in Special Civil Application No. 752 of 1980 (Coram : C.K. Thakkar, J) and on 19-1-1996 in Special Civil Application No. 4668 of 1982 (Coram : M.S. Shah, J). But since the question of constitutional validity of the provisions of the BPMC Act was also raised, the matter has been placed before the Division Bench.

3. Learned counsel for the parties have also brought to our notice the Division Bench decision in the case of Agriculture Produce Market Committee, Botad v. Botad Municipality (1999) 2 GLH 733. We have gone through the three judgments cited before us. In our opinion, the challenge to the demand of property tax and education cess made in this Petition is squarely covered by the aforesaid decisions cited before us.

4. Property tax is leviable under Section 129 of the BPMC Act. Section 132(1)(c) however exempts from property tax buildings and lands vesting in the Government and used solely for public purposes and not used or intended to be used for the purposes of trade or profit.

5. Learned Single Judges in the cases aforesaid after construing the provisions of Section 132(1)(c) of the BPMC Act came to the conclusion that the exemption from property tax is extended only to buildings and lands vesting in the Government and Corporations which are used solely for public purpose and not used or intended to be used for the purposes of trade or profit. It was also held that since the Agricultural Produce Market Committee is neither Government nor a Corporation within the meaning of those words in the said Section, the

Agricultural Produce Market Committee cannot claim exemption from payment of property tax.

6. Education cess is leviable under the Gujarat Education Cess Act, 1962. The charging Section is Section 12. Section 13 of the said Act exempts such properties of Local Authority which are "used solely for public purposes and not used or intended to be used for the purposes of trade or profit". The consistent view of the learned Single Judges as also the Division Bench of this Court is that Agricultural Produce Market Committee is Local Authority as described in Section 10(2) of the Gujarat Agricultural Produce Markets Act, 1963 and therefore exemption from education cess under Section 13(2) of the Gujarat Education Cess Act, 1962 should be available to it. The only requirement for claiming exemption is to satisfy the taxing authority that the property in question are used solely for public purposes and not used or intended to be used for purposes of trade or profit.

7. In order therefore to claim exemption, the Market Committee, in relation to a particular property, has to satisfy the taxing authority that the properties are being used only for public purposes and they are not used or intended to be used for purposes of trade or profit. This would be the only question of fact to be determined by the taxing authority for granting claim of exemption raised by the Market Committee.

8. Consequently, the Petition partly succeeds to the extent of setting aside the demands and orders Annexures A to E dated 2-3-1986 towards education cess and to the extent the demand pertains to the buildings and lands belonging to the petitioner which are used solely for public purposes and not used or intended to be used for the purposes of trade or profit. So far as the impugned orders and demands towards property tax are concerned, the Petition fails and is hereby dismissed.

Rule is partly made absolute.

In the circumstances, there shall be no order as to costs.

(D.M. DHARMADHIKARI, C.J.)

(K.A.PUJ, J.)

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